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# Court Organization and Procedures to Meet the Needs of Modern Society

David W. Peck

*Appellate Division of the Supreme Court of the First Judicial Department of the State of New York*

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# COURT ORGANIZATION AND PROCEDURES TO MEET THE NEEDS OF MODERN SOCIETY

JUDGE DAVID W. PECK†

## *The Dimensions of Justice*

Justice is usually thought of in the terms of the rightness of result reached in the individual case. This is the proper measure of justice on a single plane of one dimension.

But there are other dimensions of justice. There is a dimension in time. Was the judgment timely rendered?

There is a dimension in economics. What did it cost to get the judgment? What did it cost the plaintiff—the defendant—the public?

There is a fourth dimension. It is the total effectiveness of the system of administering justice—the total effect of court organization and procedures on the mass of litigation.

We may take just pride in a system of jurisprudence which affords a fair trial under objective law with ample safeguards of recognized rights. But we must still answer to the question—Is the system efficacious in according each case a prompt consideration and disposition by procedures which are economical in the expenditure of lawyers' time and clients' money?

Unfortunately today, the answer would have to be that justice is long delayed in many places, that courts are not efficiently organized, and that the procedures employed are so wasteful of professional time that lawyers have to go underpaid unless clients are to be overcharged.

While inordinate delays in reaching cases for trial—ranging from eighteen months to four years in centers of population—is a city phenomenon and primarily a city problem, the city does not have to reach giant size to experience it. Some medium and smaller sized cities are encountering serious delay. And procedural waste is common to court practice the country over.

The administration of justice is not a business in the sense of marketing the machine made and mass produced. But it is a business in the very real sense of being affected in the quality, quantity, cost and delivery of its product by the same factors which make any business a success or failure. Functional efficiency of organization, competency and indus-

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† Presiding Justice in the Appellate Division of the Supreme Court of the First Judicial Department of the State of New York.

try of personnel, economy and productivity of processes, play the same part in court operations as in business operations.

The priceless ingredient in the judicial product is the individual touch of lawyer and judge, the conscientious discharge of a personal responsibility on the part of the lawyer who presents a case and on the part of the judge who decides it. There is no substitute for that professional and personal care which is the core of justice. We lawyers must not diminish or dilute that professional quality. But it does behoove us to frame a court system and fashion the procedures on a sound business basis, which will allow needed professional services to be rendered in a time and at a cost which will effect complete justice.

### *Court Organization*

The organization of the court system may appropriately vary in different places according to the size of the community and the nature and volume of its litigation. The needs of metropolitan centers are different from the needs of less populated areas. Generally it can be said, however, that court systems have become over complicated and compartmentalized and that there is a basic need for simplification of court structures.

The historic practice, particularly in the large cities, has been to splinter and parcel out fields of jurisdiction among many courts of limited jurisdiction. The trend for a century has been to create rather than consolidate courts, to narrow rather than broader jurisdiction, to divide rather than concentrate administrative authority. The result, in many places, is a conglomeration of courts, each autonomous in administration, confined but overlapping in jurisdiction.

In many cities administration of the criminal law has been separated from administration of the civil law. Separate courts have been created for probate and estate proceedings and for domestic relations. There has even been an elaborate stratification of courts in the same legal line. New York City, for example, has three layers of courts in both the civil and criminal lines. The civil courts are divided by monetary limits. The criminal courts are divided by degrees of crime.

Such a fragmented court organization, without flexibility in moving judges and cases about to achieve balance in distribution, and without centralization of administrative authority, lacks the elementary essentials of a court system. It is not a court system.

It is not the purpose of this lecture to blueprint a court system for any community. But in outline the specifications of a sound court system can be stated. Although specialties exist in court work and a dif-

ferentiation can appropriately be made in the handling of cases depending on the dollar amount or degree of crime involved, still a lot of specialized and stratified courts are unnecessary and undesirable. To the extent that specialization of judges is desirable, it can be accomplished more satisfactorily by establishing divisions and assigning judges within a court than by creating specialized courts.

There should be no more than two trial courts in any community, with the possible addition of a family court.

There is no sound basis for the separation of civil and criminal jurisdictions. Any idea that judges become more expert or do a better job by being confined to civil or criminal work is a false notion. Indeed, confining a judge to criminal cases is dulling and even warping. With rare exceptions, a good judge will be equally good at any kind of judicial work, and be the better for the broader experience. If aptitudes are limited or concentration desirable, the assigning authority can readily make the indicated assignments. The federal courts throughout their history have successfully operated by combining in one court and spreading among all judges civil, criminal, admiralty and patent work.

In populous centers with a large volume of litigation there is virtue in a two-tier court system—a high court for felony cases and civil cases of relatively large importance, and a general court for lesser criminal cases and civil cases of lower monetary value.

The obvious advantage in a simple court structure, aside from operational economy, is flexibility in deployment of the judicial working force. Multiplication of court units with separate judicial complements results in freezing and wasting judicial manpower. It does not allow the movement of judicial personnel to adjust to shifting caseloads or changing needs. Aptitude of a judge for particular work cannot be recognized or employed because his ambit is dictated and limited by the fixed jurisdiction of the court to which he is attached.

A unified court system of one or two courts of general jurisdiction permits the assignment of judges according to individual qualifications and overall needs. As one branch or another of the court requires more or less judicial attention, the adjustment can be made momentarily. Fewer judges are required to man the positions because of their maneuverability. Desirable rotation of judges in the divisions of the court is made possible as well as a practical recognition of aptitudes in assignments.

#### *Administrative Authority*

The necessary corollary to a unified court system is central administrative authority exercising overall management. The fact that

judicial work is highly individual in nature does not militate against the need or value of managerial offices. A court is more than a collection of individual judges. It has a corporate responsibility for the care of all cases, to see that calendar arrangements, case administration and judicial assignments are devised to give adequate and timely attention to each case. Where the judicial function is divided between several courts, it is doubly important to have unity of administration. Someone or some group must be charged with the broad responsibility of appraising needs for judicial services, making assignments to meet the needs, adopting court rules, making up the budget and overseeing the clerical force, to the end that courts and judges will function together systematically and discharge their institutional duty.

In states of compact territory or light population, the Supreme Court is the natural seat of administrative authority over the whole court system. In the larger or heavily populated states, the Supreme Court may be too remote or too fully occupied with its own judicial work to have the contacts or time to administer a state-wide court system. Intermediate appellate courts on a sectional basis, like the Appellate Divisions of the New York Supreme Court, may be the best bodies to exercise administrative authority over the courts in their sections of the state. Or where a single trial court of general jurisdiction exists throughout a state, as in Massachusetts, administrative authority over that court may appropriately be vested in the Chief Judge. Metropolitan courts may be so distinctive in their problems and such complete and contained operations on their own as to make them a natural administrative unit.

The pattern of court organization and administration need not be the same everywhere. But the principles are the same. Whether by state, section or community, whichever makes a natural unit of manageable proportions, the courts should be integrated and under unitary administration of a single judge or appellate court.

### *Court Procedures*

Equal in importance with court organization are court procedures, and the need of revamping court procedures in this country is as urgent as the need for structural reorganization of the courts. In a word, the need is for greatly simplified procedure, more economical and expeditious than prevailing practices.

While procedures prior to trial present a somewhat different problem from the trial process itself, and this part of the lecture will deal with the former, leaving the latter for later consideration, the two do go together and jointly account for the delays and expense which place such

a heavy burden on litigation. For the moment, therefore, and for the sake of perspective, before making any analysis of either the procedures prior to trial or the trial process, I am going to invite you to take a short look backward and perceive the effect to date, on both the public and the profession, of the procedural rigmarole and the slow and cumbersome trial process. The future consequence, to the public and the profession, of perpetuating prevailing methods, can be foreseen with equal clarity and certainty.

Until the late 1920's the courts were principally occupied with commercial litigation. Trial lawyers enjoyed a rounded practice with a variety of commercial matters. Today commercial litigation has all but left the courts and the courts have been reduced to the principal occupation of personal injury litigation. Businessmen have found court procedures too dilatory and costly to serve their need for an expeditious and economical medium for resolving commercial controversies, and they have gone elsewhere for satisfaction of their demands.

Of this, the legal profession had fair warning, as it now has ample warning of a similar threat to the litigation which remains. As early as 1902 the Chamber of Commerce of the State of New York petitioned the state legislature for the appointment of a commission to study the law's delays and the cost of litigation, to the end that the courts might be better organized and procedure better adapted to the prompt and economical consideration and disposition of cases. The commission was appointed. Its report was filed. Its recommendations were ignored. The business community waited another quarter of a century for relief. Then both disappointed and disgusted, businessmen engaged in self help and created their own tribunals and procedures for handling commercial cases. Now sixty trade associations in this country maintain arbitration tribunals which handle most of the commercial cases, without the benefit of law and largely without the benefit of lawyers.

It is not within the scope of this lecture to comment on the virtues or vices of arbitration. The point is that arbitration came into being and has expanded in use as a revulsion against the complications, delays and costs of court processes. We of the legal profession may be justly proud of our governing law, the court concept and the judicial process. We have something of value to offer the business community. Many businessmen recognize and appreciate that value. But they will not return to the courts or to trial lawyers unless and until we modernize our methods.

The lesson to be learned from arbitration is that suitors seek simplicity and economy of procedure, expertise in the consideration and ex-

pedition in the disposition of cases. To regain lost ground, indeed to retain the ground now held, the profession must introduce into the court frame the attractions and advantages of arbitration, all of which can be provided consistently with the maintenance of sound court standards.

Let us make no mistake about it, the same practices which have driven commercial litigation from the courts operate adversely on the litigation which remains and threaten similarly to drive it from the courts and the profession. Inordinate delays, cumbersome procedure, and excessive costs in handling personal injury cases justify the growing agitation for a compensation system, akin to workmen's compensation, for automobile accidents, the source of about half the litigation in the courts today. Indeed, it is a safe prediction that unless court procedures are reformed to remove delays and reduce expenses, automobile injury cases will go to compensation as commercial cases have gone to arbitration.

Time here does not permit anything like a complete consideration of procedures prior to trial and of the possibilities of eliminating or compacting some of them. But if we dwell for a moment on the pleading process alone we will have a sufficient example of what is wrong and an indication of the direction in which we must move to right it.

A proper complaint and answer would bring a case to issue without pleading elaboration or correction. But it is a rare case in which the issues get defined in a complaint and answer. The pleadings are apt to be a mere formality, an opening gambit, calculated to say too little or too much, necessitating amplification, clarification or simplification by motions for bills of particulars, motions to make the pleadings more definite and certain, to separately state causes of action, or to strike allegations as irrelevant. Even in the simplest accident case, the pleadings are usually a meaningless formality of stereotyped allegations and denials, neither revealing nor conceding enough, entailing rounds of exhaustive shadow boxing before realistic contact is made. The list of motions and cross-motions which are idled through in quite ordinary lawsuits dooms many from the start to delay and expense which impair or destroy the value of the right to prosecute or defend.

Actually, not even a complaint and answer are necessary. Lawyers could as easily and more effectively confer and agree on a statement of claims, defenses and issues. The New York Civil Practice Act now provides for such a submission of a controversy without pleadings. A single statement subscribed by the attorneys is accepted in lieu of pleadings.

I suggest that the way lawyers should proceed is to confer as a matter of course as soon as a claim is made. If they cannot adjust the matter without litigation, they should set forth their differences in precise

terms after adequate disclosure and discussion of their positions. The time so spent in personal contact will be much more productive than the formal and usually fruitless tilting and jousting with pleadings and motions.

Frankly, the answer to the procedural perplexity is in the attitude and action of lawyers, their frame of mind and habits of practice, rather than in any code which might be devised. Simplified procedure must begin with the willingness of lawyers to forego and give up delaying maneuvers and harassing tactics.

Perhaps it is too idealistic to hope that pettifoggery and cold war tactics will be eliminated from trial practice. But vogues can change and a few leaders of the Bar could set a pattern which others would follow. If through the experience of experiment lawyers could once see what was to be gained and saved by directly coming to grips with a case, short-circuiting the procedural routine and dropping the shadow boxing, they would develop habits that would make dilatory procedural maneuvers a dead letter rather than a dead load on litigation.

It may be that most of the present procedural provisions are necessary in the sense that they should be available if a case will not get in shape for trial without exhaustive procedural efforts. But the rule-making authority can provide permissive means of bringing a case to issue without pleadings, and should provide certain sanctions which judges may impose for procedural abuses. For example, meaningful costs should be imposed if a party so conducts litigation as to necessitate the other party's making a motion which would not have been necessary if proper procedure had been followed in the first place. Similarly, punitive costs should be imposed if a party makes an unwarranted motion. Codes of procedure should generally allow applications, which are usually made by motions addressed to the court, to be made by requests addressed to the other party, and such requests should precede the making of any motion for the relief requested. If a motion follows, substantial costs should be assessed against the party at fault in making the motion or in requiring it to be made.

But elaborate rules and adequate sanctions will not be nearly as salutary as the common adoption and acceptance by the Bar of sound practices as a matter of course. A conscientiously implemented resolve to simplify procedure would pay large dividends in time saved, smoother professional relations and economies mutually beneficial to client and lawyer. It would also go far to remove the psychological barrier which now separates many a prospective client and his case from a lawyer and the court.



*The Trial*

The actual trial, when conducted by a judge without a jury, is usually as expeditious and to the point as could be asked. Most trials, however, are before juries and the jury process is inherently slow. Every phase of a jury trial, being geared to the assimilation of the unfamiliar by the inexpert, is much slower than a trial before a judge alone. Not only are there time consuming features of a jury trial wholly absent or substantially abridged in a trial before a judge—such as the selection of the jury, opening statement, summation and charge—but the whole conduct of a jury trial is greatly elaborated and extended in the questioning of witnesses, objections, rulings and by-play. In all, it takes two and a half times as long to try a case before a jury as before a judge.

It is not within the scope of this lecture to discuss the advantages and disadvantages of the jury system or to appraise the place of the jury in a modern court system. Concededly the jury is of such value in serious criminal cases that no one would suggest giving it up, although the trend is to confine the use of juries in criminal cases to crimes of felony degree and to submit lesser charges to a judge or banc of judges. In any event, the number of criminal cases which are tried in any community is not so great as to constitute a drag on court time or prevent prompt trials.

In the civil area, particularly the class of cases which constitute the bulk of work in the courts, personal injury cases, the use of the jury does delay trials and is principally responsible for the trial delay which exists in American cities. The jury process is the bottleneck in the case line. The slowness of the process, administered by a limited number of judges and applied to a large number of cases, operates to back cases up in a long line awaiting their turn at the bottleneck. The delay in reaching cases for trial also operates to postpone the ultimate settlements which are made, so that all cases, whether tried or settled, are held up and prejudiced by the inability of the courts to digest and keep up with the caseload while employing existing facilities and procedures.

I happen to think that all interests would be better served by some qualification of the right to a jury trial in civil cases in congested communities. In personal injury cases I would complement the avoidance of juries with the abolition of the rule of contributory negligence and substitution of a rule of comparative negligence. In my view, the consideration and decision of these cases by a judge under a rule of comparative negligence would be the closest approximation to justice we

could get, and it would be accompanied by prompt hearings and dispositions, with an enormous saving of time and expense.

But recognizing the arguments in favor of a jury, even in civil cases, and conscious of the still prevailing sentiment in favor of jury trials, I do not make my own preference for non-jury trials a keystone in the arch of a contemplated court system. Realism compels the conclusion, however, that delays will be eliminated and prompt trials had in centers of population only through some qualification of the right to a jury trial, substantially reducing the number of such trials, or by a vast increase in court plant and facilities, the number of judges and calls upon the citizenry for jury duty.

### *The Pretrial Conference*

The overloading of present court facilities committed to employing prevailing court processes, with the consequent roadblocks and delays, makes it imperative to seek means of relieving the congestion by avoiding the trial route. The compelling need is for an alternative or substitute for the full trial course, a short-cut, a simple, quick and inexpensive method of determining cases—one which, although it may not be foisted on parties instead of according them the right of trial, is regularly available and employable in advance of trial, without prejudicing a subsequent trial, and is generally adequate to effect an accord and save the labor and cost of a trial.

The professional procedure admirably suited to this purpose is the pretrial conference, an informal but professional survey of a case by a judge and the two lawyers sometime before the case would be reached for trial. They can come to grips with a case, go to the heart of it, and make an accurate appraisal of its merits and value in fairly short order. Combining the expertness, experience and judgment of court and counsel, these three co-professionals are more likely to reach a fairer and sounder conclusion in short time than a jury of laymen would come to after the long process of trial.

The immense value of the pretrial conference as a method of settling cases, avoiding trials and relieving congestion has been demonstrated wherever it has been earnestly employed. It would be fair to say that without pretrial conferences the administration of justice would have broken down in some localities. I know that is true in the City of New York. The dispositions effected by pretrial conferences have literally saved the court system.

It is not generally realized how few cases and what a small proportion of the cases are actually tried to completion. Of the thousands of

cases entering metropolitan courts each year, only a few hundred are tried to a decision. Over 90% are settled. If this were not so the delay in reaching cases for trial would be much greater than the current figures of two, three and four years. Metropolitan courts, surfeited with accident cases, simply cannot handle them by traditional trial methods with anything like the present number of judges and jurors. An abridged procedure is absolutely essential and the pretrial conference fills the need. That is, it fills the need if properly conducted. Merely calling a pretrial conference or calling it a pretrial conference will count for little. The efficacy of the conference is dependent upon the serious purpose and good faith efforts of the lawyers, and the application and good sense of the judge.

There is so much misunderstanding and difference of opinion as to the proper function and purpose of the pretrial conference that clarification of the meaning and scope of "pretrial" is called for. "Pretrial" may range in scope from a perfunctory inquiry into the possibility of settling a case, the merest surface consideration of a case, resulting in a disposition only when the case is obviously ripe for settlement, to an elaborate parsing of issues and attempt to narrow the issues by formal admissions. In between is a less formal approach but serious exploration of a case directed at effecting a final disposition.

There is a school of pretrialers who think of pretrial primarily as a means of simplifying or reducing issues, putting a case in neater shape for trial, thereby reducing trial time. To them, settlement of a case may be a fortunate incident or by-product of the conference, but it is not regarded as the objective of the proceeding. Another school regards settlement as the sole objective and any tangential attention to a case a waste of time.

It is my conclusion that each approach, or perhaps a combination, has its virtue and value, depending on the nature of the case. The procedure should be flexible. Instead of being cast in a set form or following a fixed formula, the conference should be adapted to the case at hand and the indicated possibilities for fruitful exploration after an initial look at the case. Disposition should be frankly sought, but if that proves impossible any possibility of simplifying or reducing issues should be pursued. The complicated cases are more difficult to settle but lend themselves to a sharpening of issues. The run of cases, such as the ordinary personal injury actions, do not require or warrant a formal refining of issues, but do offer a promising possibility of settlement by going directly to that objective. The experienced judge with intuition and insight can quite quickly perceive the promise in proceeding one way

or another and will conduct the conference in a manner best calculated to realize its potential.

It is no minimization of the role of the lawyers in a pretrial conference to say that the success of the conference is principally dependent upon the perception and diligence of the judge. The lawyers will usually respond to his attitude and good offices. His part in the conference is the most arduous of judicial labors. It is quite a different role and one much more exacting than presiding over a jury trial and simply ruling on evidence and charging the jury. The judge who fully performs his part in a pretrial conference must bestir himself to grasp the case and to concentrate the attention of both himself and the lawyers in a fair consideration of the case. His incisiveness, patience, persistence and good judgment are crucial contributions to the conference. He may not fancy the role, but the judicial function thus well performed is more productive than many times the same amount of time put in a formal presiding over jury trials.

The use of the pretrial procedure here outlined will go a long way toward effecting justice and reducing the court caseload to manageable proportions. Perhaps in this way we can even preserve the right to a jury trial without greatly expanding court facilities. It is worthy of note in this connection that through the energetic use of pretrial procedures, including the use of impartial medical testimony, which will be alluded to in a moment, and the application of a readiness rule, which requires as a condition for placing a case on a trial calendar that counsel certify that they have completed all pretrial procedures and are actually ready for trial, the backlog of cases awaiting trial in the Supreme Court of New York County has been reduced in the last seven years from 15,000 cases to less than 3,000 cases, and delay in reaching cases for trial has been altogether eliminated in every type of case except personal injury cases scheduled for jury trials, and the delay in those cases has been reduced from four years to nineteen months.

#### *Impartial Medical Testimony*

The discussion so far indicates that improvements in the administration of justice are to be effected by the simplification rather than the elaboration of procedures, by reducing rather than adding steps in the judicial process. There is one innovation which can be made, however, adding an agency or procedure, which will contribute measurably both to improving the quality of the judicial product and to reducing expense and delay in the process. This is the use of impartial medical testimony in resolving the medical issues in personal injury litigation.

As personal injury cases constitute about 80% of the litigation in the courts of this country, and as disputes over the nature and extent of the injuries constitute a major consideration in most personal injury cases, ranking in importance and time consumed with the issue of liability, it is obvious that any procedure which will enhance the chance of getting the right answer to the medical questions and reduce the time, normally spent on the medical inquiry will be a major contribution to the administration of justice. Such a doubly effective procedure has been developed and perfected. Its value has been proved in adequate experience. Its importance is so great that it is singled out for mention here as one innovation or addition to court procedures which alone will make a marked difference in resolving controversy, effecting dispositions, and relieving congestion.

The procedure for employing impartial medical testimony in personal injury cases was designed to overcome the deficiencies in prevailing methods of presenting medical testimony—methods which draw out rather than resolve controversy, confuse rather than enlighten a jury, and fail to offer reliable guidance to the jury in forming judgments as to medical facts and issues. While ascertainment of the facts bearing on liability may satisfactorily be made by lay judgments on the basis of the common experience of a jury, the determination of medical facts calls for special knowledge which a jury does not possess. The jury is dependent on the aid of experts in this scientific realm. The expert testimony is ordinarily supplied by partisan experts retained by the respective sides to present their viewpoints. Too often these experts color their testimony, maximizing or minimizing the injuries as suits the side retaining them. That a jury does not receive altogether trustworthy information and reliable guidance under the purely adversary method of presenting medical evidence through partisan experts is abundantly clear. A sample study of cases in the Supreme Court of New York revealed that in a quarter of the cases there were gross errors in the reading of X-rays and that in over a quarter of the cases essential tests to warrant a diagnosis were not made.

We may accept with a certain equanimity the controversies presented as to the facts of how an accident happened and who was to blame. Such controversies cannot be avoided or eliminated, and can as well be resolved by a representative body of the community as by any other means. It is disturbing, however, indeed disgusting, to find such variations as frequently exist on the professional plane of medical testimony. Unfortunately, there has developed a fashion of employing doctors as well as lawyers as advocates, and the doctors retained as experts for the

respective sides readily become medical mouthpieces. Experts are frequently sought and retained more for a cultivated art of testifying than for basic competence and essential integrity. The jury is left without adequate insight to determine the facts or pass upon the credibility of the contesting experts.

The best corrective for this condition is rather apparent. It is to bring into the medical inquiry neutral experts of unquestioned competence and honesty, doctors of the highest professional qualifications who have no interest other than the elicitation and presentation of objective truth. Establishing a panel of such experts who will be available at the call of the court in those cases which present a substantial controversy as to the nature or extent of the injuries is a proper function of a court. It can easily and effectively be done as has been demonstrated by court undertakings in two cities, New York and Baltimore.

The procedure is simple both in outline and operation. The initial step and first essential is the selection of a panel of recognized authorities in the branches of medicine which become involved in traumatic injuries. The selection is made by the local medical societies strictly on the professional basis of highest qualifications. The doctors so selected will be men who would eschew the role of a partisan expert and would ordinarily refuse to appear in litigation. They are almost invariably willing, however, to respond to a call from the court as a professional and public duty.

The call upon a member of the panel is made after a pretrial conference has disclosed a sharp dispute over the medical aspects of a case, the kind which is not likely to be resolved satisfactorily by a battle of experts. The plaintiff is then referred to an appropriate member of the panel, one particularly versed in the claimed injury, and after making a thorough examination the panel doctor reports his findings to the court. Copies of the report are also given to counsel for both sides. Then another pretrial conference is held in which the case is considered in the light of the independent medical report.

Experience has shown, as might be expected, that the medical controversy is usually resolved in this way and the case is settled. Many a long, hard trial is thus saved, and the settlement made with more conviction, conscience and comfort than if the dispute were carried to a verdict.

If the case is not settled, the impartial expert remains subject to call at the trial by either party or by the court. Of course, the parties are still free to engage and use their own experts.

The second essential, next in importance to the manner of selecting members of the panel, is that their compensation be paid from some in-

dependent source or fund, or at least that they be unaware that their compensation is connected with one party or the other. In New York, payments are made entirely from court funds provided in the regular court budget. In Baltimore, payment is made by arrangement between the parties or by direction of the court without the doctor knowing anything of the arrangements.

The only other essential to thoroughly successful and satisfactory panel procedure is that it be employed in the first instance in connection with a pretrial conference or some similar unhurried and deliberative process in which counsel can consider and discuss the case between themselves and with the court on a professional plane.

The Section of Judicial Administration of the American Bar Association, having studied the operations and results of the New York and Baltimore procedures, concluded that the introduction of impartial medical testimony into the resolution of controversies over the medical incidents of personal injury cases has the following wholesome and beneficial results: (1) It improves the process of finding the medical facts, vastly increasing the likelihood of reaching the right result. (2) It serves to relieve court congestion by bringing about the settlement of many cases which would otherwise have to be tried and which by their nature would entail lengthy trials. (3) It has a prophylactic effect upon the formulation and presentation of medical testimony in court. (4) The modest cost involved in the payment of independent experts is a positive economy in effecting a large saving in court operations.

In its report to the House of Delegates of the American Bar Association, the Judicial Section said: "The plan and procedure for establishing and employing an independent medical panel may readily be adopted in any community where there is a volume of personal injury litigation in the courts, and where there is a sufficient number of qualified doctors available to constitute a pool." Calling upon the Bench, Bar and medical profession to join in a national program of fostering the establishment of impartial medical panels in the courts in centers of population, the members of the Judicial Section unanimously stated that: "We can think of no single step that would be as pointed and effective a contribution to the administration of justice as enlisting this aid in the consideration and disposition of personal injury cases."

I am glad to say that the House of Delegates at its last meeting adopted the report and recommendation of the Section of Judicial Administration and resolved that the recommended national program of establishing impartial medical panels in the courts of the country be undertaken.

This lecture, although compacted for a single sitting, has run the gamut of court problems and the possibilities for improving the administration of justice. The problems are obvious, the solutions almost equally so. What has been lacking so far is the interest and will on the part of a sufficient proportion of the profession to frame and carry out the necessary program of reform. It took seventeen years of sustained effort to adopt the now heralded reorganization of the courts of New Jersey. Nearly as many years have been devoted by leaders of the Bar in Illinois to formulating a modern court system for that state and advancing it to the point where the legislature approved a plan for submission to the electorate next fall. Court reforms of significance, not touching the court structure, have been made over the past ten years by the judiciary in New York. But the program of court reorganization framed by the Temporary Commission on the Courts, after many years of study and discussion, is still on dead center awaiting legislative approval.

Barnabas F. Sears, one of the leaders of the forces for court reform in the State of Illinois, was altogether apt when he recently spoke of the undertaking of court reform as "No Sport for the Short-Winded." Because this is so, we may have to wait for another generation, fresh in outlook and ideas and free from accumulated prejudices, to generate the energy and sustained effort necessary to modernize court organizations and procedures. Because this is so, the occasion of our meeting here is a good time and place to reflect and resolve on the subject of our courts in relation to the needs of modern society.

The subject has been neglected in law school curricula and even in extracurricular projects. Ancient and existing court procedures have been studied, but little critical and constructive thinking has gone into the study. Substantive and adjective law have been thoroughly digested, but the courts structurally and functionally have hardly been examined, and the administration of justice has been ignored or regarded as something remote, of later concern perhaps but not of immediate interest.

The administration of justice must not be left as the concern only of politicians, judges and trial specialists, most of whom are set in their ways and feel no urge to change the status quo. The Bar generally, particularly the younger members, and law teachers and law students should become aware of the immediacy and urgency of their vital interest in the courts as an institution and in court procedures and professional practices.

The pace of life, the close living of a growing population, the increasing interdependence of people in economic, political and social relationships, multiplying the points of contact and friction, are bound to create controversies and increase the demand upon society's agencies for



the resolution and adjudication of disputes. The big question in the law today is whether, against the inroads of administrative agencies, arbitration tribunals and compensation boards, the courts will survive as a major institution, performing the judicial function, or be further displaced by other public or private agencies employing streamlined procedures. Will the profession retain its traditional role in advocacy and adjudication by adapting to the dynamics of the age of automobiles, airplanes and atomic missiles, or will it sacrifice the role by adherence to traditional methods?

Lawyers have displayed in other areas of the law a capacity for adjustment, an adaptability to heightened demands for new and fast-paced legal services, and have thus extended the participation of the profession in an expanding economy. Only in the court area have lawyers been content to contract, resistant to change, seemingly oblivious to the consequence to others or themselves.

Court organization and procedures to meet the needs of modern society are the concern of judges, practicing lawyers, law teachers and law students. The courts as an institution, the processes of litigation from beginning to end, the total administration of justice, call for our urgent attention, and deserve the most thoughtful and constructive action of which a great profession is capable.